IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
WRIT PETITION NO.2089 OF 2006

PCS Technology Ltd. & anr. .. .. Petitioners
v/s.

Union of India & ors. .. .. Respondents

Mr.Milind Vasudeo with Mr.A.R.Ravindran for petitioners.
Mrs.S.V. Bharucha for respondents.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 8th November 2006

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith.

3. This Petition seeks to challenge the order dated 8th June 2006 passed by the Customs Excise & Service Tax Appellate Tribunal Mumbai, whereby the petitioners herein are required to make a pre-deposit of Rs.15 Lakhs for hearing of the Appeal which the petitioners have filed against the order dated 31st January 2006 passed by the Commissioner of Central Excise (Appeals). That order was passed against the order in original dated 17th October 2005.

4. Facts leading to this Petition are as follows:-

. The petitioners had imported certain machinery which was governed under the Project Import Regulations, 1986. The imports were effected sometimes in 1989-90. Much later i.e. on 14th September 1995, the petitioners were issued a notice calling upon to produce certain documents in terms of Regulation 7 to establish that the machinery imported had been duly installed. The case of the petitioners is that the machinery had been duly installed, though subsequently there was a fire in the factory on 24th September 1995. It is their further case that in May 1996 they closed their factory at Noida wherein the machinery was initially installed and it was shifted to Silvassa.

5. In any case, it was the case of the petitioners that Regulation 7 requires these particulars and it came into force on 7th January 1992 i.e. much subsequent to effecting the imports. The petitioners had given a provisional duty bond of Rs.43,11,000/- while importing the machinery. The notice was issued against the petitioners directing the enforcement of the duty

bond. A bank guarantee which the petitioner had given at the time of registration of their project to the tune of Rs.2,15,000/- was also directed to be enforced. The Appeal preferred therefrom having been dismissed, the petitioners carried the matter to the Customs & Service Tax Appellate Tribunal wherein this pre-deposit has been directed.

6. Mr.Vasudeo, learned Counsel appearing for the petitioners, principally made two submissions. Firstly, he submitted that Regulation 7 came into force on 7th January 1992 and it could not be applied to the imports which were effected by the petitioners. Secondly, he submitted that in any case the machinery concerned had been duly installed and independent of the aforesaid submissions, the petitioners have the necessary documents to show that the machinery was so installed and this fact has been verified by the concerned officers of the Sales-Tax Department of State of Uttar Pradesh.

7. Mrs.Bharucha appearing for the respondents, however, submitted that since the petitioners had not pointed out any hardship, the impugned order has come to be passed and the same

need not be interfered. She further submitted that the documents which are now produced before this Court were not produced before the Authorities below where they ought to have been produced. In this behalf, she relies upon a judgment of the Apex Court in the case of **Mihir Textiles Ltd. vs. Collector of Customs, Bombay reported** in **1997 (92) E.L.T. 9 (S.C.)**.

8. We have noted the submissions of both the Counsel. As pointed out by Mr.Vasudeo, the position is quite clear, namely, that Regulation 7 came to be added in the Project Import Regulations, 1986 with effect from 7th January 1992. The requirement which is being insisted was not holding the field at the relevant time of import. That being so, on the ground of failure of that requirement, the pre-deposit, as directed, could not have been directed.

9. For the limited reason as stated above, we set aside the order dated 8th June 2006 of the CESTAT directing the petitioners to make this pre-deposit. The Appeal will be heard and decided on its own merits and independent of the aforesaid submissions. It will be open to the petitioners to produce the documents to prove the installation of the machinery at Silvassa.

10. Rule is made absolute as above. No costs.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)